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# In the Supreme Court of the United States

OCTOBER TERM, 1936

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No. 70

THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS, DANVILLE, ILLINOIS, THE VETERANS' ADMINISTRATION, ET AL., PETITIONERS

*v.*

HARVEY M. WOOD, AS ADMINISTRATOR OF THE ESTATE OF WALTER SEARLES, DECEASED

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*ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

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## BRIEF FOR THE UNITED STATES

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### OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Illinois (R. 18–23) is not officially reported. The opinion of the United States Circuit Court of Appeals for the Seventh Circuit (R. 38) is reported in 81 F. (2d) 963.

## JURISDICTION

The judgment of the Circuit Court of Appeals for the Seventh Circuit was entered February 19, 1936. The petition for a writ of certiorari was filed on May 19, 1936, and was granted October 12, 1936. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

## QUESTION PRESENTED

Whether an accumulated pension fund, credited to an inmate of the National Home for Disabled Volunteer Soldiers and standing in the treasury in the name of the treasurer of such Home, becomes payable to the post fund of such Home at the death of the inmate, who left surviving him no widow, minor children, dependent mother or father, or whether such fund is a part of the estate of the inmate which may upon his death be recovered by his administrator.

## STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in the Appendix, *infra,* pp. 18–22.

## STATEMENT

On February 26, 1932, a suit was instituted both against the National Home for Disabled Volunteer Soldiers, Danville, Illinois, petitioner herein; the Veterans' Administration Home, Danville, Illinois; Ralph W. Jones, as accountant of the Veterans'

Administration Home, Danville, Illinois, and as Treasurer of the National Home for Disabled Volunteer Soldiers, Danville, Illinois; and Walter T. Christy, as Special Disbursing Agent of said Veterans' Administration Home, Danville, Illinois. Respondent, who was plaintiff therein, is administrator of the estate of Walter Searles, deceased, a pensioner (R. 12). The facts, which were stipulated, may be summarized as follows:

Walter Searles, the decedent, was duly enrolled as a member of the National Home for Disabled Volunteer Soldiers at Danville, Illinois, on October 19, 1924. Thereafter, until his death on September 16, 1926, certain amounts granted and allowed him under the pension laws of the United States were paid in installments of $72.00 per month to the Treasurer of the Danville branch of the National Home for Volunteer Soldiers (R. 13–14). At the time of his death there was on deposit to his credit with the Danville branch approximately $1,800, and at the time of the filing of the suit there remained, after certain deductions concerning which there was no question, the sum of $1,546.47 (R. 14). Walter Searles died intestate, leaving as his only heir at law a son, Herbert A. Searles, who was not a minor (R. 15).

Within one year following the death of Walter Searles, Herbert A. Searles, his legal heir, made demand upon the National Home for Disabled Volunteer Soldiers for the payment of the pension

fund (R. 16). Thereafter, on March 23, 1931, demand was made upon the Veterans' Administration by the respondent and by Herbert A. Searles for the allowance of the sum of money remaining in the hands of the Veterans' Administration or its proper officials as accrued pension money due Walter Searles (R. 15). On March 25, 1931, the Veterans' Administration refused to accede to this demand (R. 16).

On January 26, 1935, the District Court entered judgment against the petitioners, the National Home for Disabled Volunteer Soldiers, Danville, Illinois, and the Veterans' Administration,[1] in the sum of $2,184.63, which represented the sum on deposit with the treasurer of the home plus interest, and costs of the suit. Judgment was not entered against the Veterans' Administration Home, Danville, Illinois, or against Ralph W. Jones or Walter T. Christy (R. 26). On appeal this judgment was modified by refusing to allow respondent costs, and, as modified, affirmed (R. 42).

## SPECIFICATION OF ERRORS

The court below erred:

1. In holding that on the death of an inmate of a National Home for Disabled Volunteer Soldiers without leaving a widow, minor children, or de-

[1] The Veterans' Administration had not been joined as a defendant. See *infra*, pp. 12–17.

pendent mother or father surviving him, accrued pension money in the hands of the treasurer of the home passed to the inmate's administrator, and not to the post fund of the Home.

2. In holding that the Act of June 25, 1910, and not the Act of July 1, 1902, controlled the disposition of such fund.

3. In affirming the judgment of the District Court.

## SUMMARY OF ARGUMENT

### I

The Act of July 1, 1902, *infra,* p. 20, provides that any balance of pension money due a member of the National Home for Disabled Volunteer Soldiers at the time of his death shall, in the absence of a specified class of beneficiaries, pass to the post fund of the Home. The money here involved, which was held by the treasurer of the Home for a deceased pensioner, retained its character as pension money, and, the specified beneficiaries being absent, passed to the post fund under the 1902 Act.

The court below, however, held that the 1902 Act has been repealed, *pro tanto,* by the Act of June 25, 1910, *infra,* p. 20, which required an applicant for membership in the Home to agree that upon his death all his personal property held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, should pass to the Board of Managers of the Home,

subject to being reclaimed by any person entitled thereto within five years. This Act, we submit, did not repeal the 1902 Act. Repeals by implication are not favored. In respect of pension moneys, Congress has consistently limited the beneficiaries of a deceased pensioner. The 1910 Act was intended to reach different property, namely, funds other than those in the hands of the treasurer of the Home. Both the legislative history of the 1910 Act and a consistent administrative interpretation show that the 1902 Act rather than the 1910 Act controls the disposition of the fund in the present case.

II

The suit was instituted against the National Home for Disabled Volunteer Soldiers and the Veterans' Home at Danville, Illinois. The National Home for Disabled Volunteer Soldiers has been dissolved, its functions assumed by the Veterans' Administration, and its obligations by the United States. However, the United States defended the suit both in the District Court and in the Circuit Court of Appeals, although its name did not appear in the caption of the case as a defendant. The judgment, however, is, in effect, a judgment against the United States. Any procedural deficiencies were waived by the general appearance of the United States. These circumstances, we submit, are sufficient to confer jurisdiction under the Tucker Act.

## ARGUMENT

### I

The Act of July 1, 1902, *infra*, p. 20, provides that any balance of pension moneys due a member of the National Home for Disabled Volunteer Soldiers at the time of his death shall be paid to his widow, minor children, or dependent mother or father in the order named, and that if no such person be discovered, such balance shall be paid to the post fund of the branch of the National Home of which the pensioner was a member at the time of his death.

It seems clear that the phrase "balance of pension money due" covers the fund here involved, i. e., money which has been paid to and is held by the Treasurer of the Home to be disbursed for the benefit of the pensioner. A similar use of the word "pension" is to be found in prior statutes. Section 2 of the Act of February 26, 1881, *infra*, p. 18, which first made provision for paying the pension of members to the treasurer of the Home, states that any balance of the "pension" which may remain at the date of the pensioner's discharge shall be paid over to him. Section 4 of the Act of March 3, 1883, *infra*, pp. 19–20, with reference to the fund in the hands of the treasurer, refers to it as "any pension money due" the member. Moreover, a pension retains its character as such at least until it has been reduced to possession by the pensioner. *Trotter* v. *Tennessee*, 290 U. S. 354, *McIntosh* v. *Aubrey*, 185 U. S. 122.

Admittedly, the deceased left surviving him neither wife, minor child, nor dependent mother or father. We submit, therefore, that the fund involved in the instant case constituted pension moneys due the deceased which, under the Act of July 1, 1902, passed to the post fund of the Home.

The court below, however, held that the Act of June 25, 1910, *infra,* p. 20, and not the Act of 1902, controlled the disposition of the fund. The 1910 Act provided that all applicants for membership be required to enter into a contract with the Home providing that when a member of the Home died, leaving no heirs at law or next of kin, all of his personal property, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, should pass to the board of managers of the Home subject to being reclaimed within five years by any legatee or person entitled to take the same.

The Act of June 25, 1910, like the Act of July 1, 1902, constituted one of many enactments relating to the disposition of personal property of members of national homes for disabled volunteer soldiers. These statutes, we submit, should be read so as to give effect to each separate enactment in so far as they are not repugnant. While the court below spoke of the Act of 1910 as enlarging the persons who were able to take the balance of pension money due, nevertheless it, in effect, held that the Act of 1902 was repealed by implication. The law is, of

course, well settled that repeals by implication are not favored, and where two statutes cover in whole or in part the same matter, and are not absolutely irreconcilable, the duty of the court is, if possible, to give effect to both. *Frost* v. *Wenie,* 157 U. S. 46, 58. Cf. *Ex parte Webb,* 225 U. S. 663, 683; *Harford* v. *United States,* 8 Cranch. 109. We believe that these two statutes are not only capable of being but should be construed so as to give full effect to each.

While we have been unable to find any report or debate throwing light upon the legislative history of the Act of 1902, its purpose is plain: When a member of the Home died, pension money standing to his credit in the hands of the treasurer should pass only to certain designated individuals to whom the deceased might well be expected to owe a duty of support. Consistently this has been the legislative policy of Congress. For example, Section 25 of the Act of March 3, 1873, c. 234, 17 Stat. 566, 574, limited the beneficiaries of an accrued or unpaid pension, in the event of the death of a pensioner, to the wife and children below the age of sixteen years. It specifically provided that the pension should not constitute an asset of the estate of the deceased. The Act of March 2, 1895, c. 193, 28 Stat. 964 (U. S. C., Title 38, Sec. 96), reenacted this provision. It is even more evident why in the case of an inmate of the National Home for Disabled Volunteer Soldiers a limited class only was entitled to receive the accrued pension money in the hands of the treasurer of the Home. These Homes

are supported exclusively by public moneys of the United States, and the members thereof were required to pay no sum whatsoever for the care which they received therein. In these circumstances, it was reasonable and just for the Congress to provide that the accrued pension money of a deceased inmate should, in the absence of the limited class of beneficiaries set forth in the Act of 1902, pass to the post fund of the Home.

Some light, however, may be thrown upon the reasons which led to the enactment of the Act of June 25, 1910. Mr. Tawney of Minnesota, Chairman of the Appropriations Committee in charge of the bill, stated that many members of Homes were dying intestate, leaving no heirs. In many instances, these deceased members had large bank balances which were at times made a pretext for fictitious administration proceedings, and were subject to escheat to the State in which the Home was located. Recognizing that the character of these deposits was such that the Federal Government could exercise no direct legislative control over them, he stated that the only manner in which custody of such funds could be obtained was by a contract entered into by every applicant for membership of the Home, wherein the applicant would agree, in the event of his death intestate and without heirs, that such property should pass to the Home. Cong. Rec., Vol. 45, pp. 7011–7013, 7101.

Thus we have presented to us the patterns in which the statutes fit. The 1902 statute related

exclusively to pension moneys over which the United States had plenary control. The 1910 statute related to other assets over which the United States had no control whatsoever, and to reach which it was necessary to contract with an applicant for admission.

The administrative interpretation consistently has been that in the absence of the limited class specified in the Act of 1902, pension moneys in the hands of a treasurer of a home upon the death of a member passed to the home. 19 Comptroller of the Treasury 388 (1913); 4 Comp. Gen'l 752 (1925); 14 Comp. Gen'l 115 (1934). Administrative interpretations of long standing, while not binding, are entitled to great weight, as it may fairly be presumed therefrom that were such interpretations contrary to the legislative intent, remedial legislation would be enacted. *Costanzo* v. *Tillinghast,* 287 U. S. 341, 345; *McCaughn* v. *Hershey Chocolate Co.,* 283 U. S. 488, 492.

The court below treated the terms "proceeds of pension money" and "pension money" as being synonymous. This, we think, is clearly erroneous. Until pension money has been reduced to possession by the pensioner, it still retains its character as such. *Trotter* v. *Tennessee*; *McIntosh* v. *Aubrey, supra.* It is only after it has been reduced to possession and changed its form that it can be referred to as the "proceeds of pension money." Furthermore, the 1910 Act specifically refers to personal property owned at the time of the pen-

sioner's death, including money or choses in action held by him. Clearly, the deceased in this case did not hold the pension money. That money was held by the treasurer of the Home. It is apparent, therefore, that the 1910 Act did not, and could not have been intended to, relate to pension money held by the treasurer of the Home.

We submit that the decision of the Circuit Court of Appeals for the First Circuit, in *Durack* v. *National Home for Disabled Volunteer Soldiers,* 44 F. (2d) 516, constitutes the correct interpretation of the law. The court there held that the 1902 Act was controlling as to pension money in possession of the Treasurer of the Home at the time of the inmate's death, and distinguished the Act of 1910 as applying to all personal property in the possession of the inmate. The reason for the distinction between the two Acts in the class of persons entitled to receive before the post fund was deemed "too obvious to require comment." 44 F. (2d) 516, 517.

We contend that the decision of the court below was erroneous, that the 1902 Act exclusively related to the pension money, and that the 1910 Act related to personal property other than pension money. This contention, we believe, is borne out by the plain language of the statutes, as well as by the administrative interpretation which has been placed thereon for more than twenty years.

## II

As was pointed out in the petition, the form of the proceedings in the present case is somewhat peculiar and requires comment. By the Act of July 3, 1930 (c. 863, 46 Stat. 1016; U. S. C., Title 38, Sec. 11d), *infra,* pp. 21–22, Congress provided that the corporation known as the National Home for Disabled Volunteer Soldiers should be consolidated with the United States Veterans Bureau and the Bureau of Pensions into the Veterans' Administration, and that when the consolidation was proclaimed by the President the corporation should cease to exist. Under date of June 21, 1930, the President issued this proclamation (Executive Order No. 5398), and from that date the corporation has had no existence, and all its assets have been in the possession of the Federal Government.

By Section 5 (b) of the Act of July 3, 1930, however, the United States assumed all the valid and subsisting obligations of the defunct corporation, and provided that the obligations might be enforced—

> * * * by suit in the Court of Claims or in the district courts of the United States according to the ordinary provisions of law governing actions against the United States, and such courts shall have the power to enter judgment against the United States, with interest, in the same manner and to the same extent as if said corporation were party defendant.

When respondent filed his declaration on February 26, 1932 (R. 5), he did not name the United States as defendant, as he should have done had he followed the literal requirements of the Act. However, he did advert to the fact that the corporation was—

> * * * dissolved and all its duties, obligations, rights, powers, etc., transferred to the Veterans' Administration of the City of Washington, District of Columbia, as a part of the Government of the United States. (R. 5.)

This may be taken as an indirect and inartistic way of making the United States, through the Veterans' Administration, a party defendant, even though not named in the caption. It seems to have been so construed by the trial judge, who directed that the judgment run against the defunct corporation and the Veterans' Administration (R. 26) which he apparently considered to be the Government as represented by that branch most directly concerned with the administration of veterans' affairs. Moreover, it seems to have been so interpreted by the United States Attorney, who thereafter proceeded in the name of the United States of America (R. 26, 27, 28, 29, 31).

However, even if the United States was not thus made a party, nevertheless the District Court and this Court have jurisdiction of the present case. The action is, according to the caption, against the defunct corporation, the Veterans' Administration

Home, which is merely a group of buildings having no independent legal status, and two persons holding positions under the United States, in their official capacities. Actually, however, the suit has been treated as one in which the United States was the real party defendant; indeed, in the motion for a new trial (R 25), and in all subsequent proceedings, action has been taken in the name of the United States of America (see R. 26, 27, 28, 29, 31). Any judgment entered in favor of respondent would of necessity be a judgment against the United States, which now has possession of all the assets of the defunct corporation, including those claimed in the present case (Act of July 3, 1930, c. 863, 46 Stat. 1016; U. S. C., Title 38, Sec. 11d), for the individuals were not sued in their individual capacity, and no judgment was entered against them in either capacity (R. 26). As the court below pointed out in its opinion (R. 41), petitioners urged in opposition to the allowance of interest and costs that the suit was in fact one against the United States, and on this basis succeeded in having costs eliminated from the judgment of the District Court (R. 42). In such circumstances it is submitted that the court below was correct in holding that the suit, although formally against others, was in fact against the United States. Cf. *Minnesota* v. *Hitchcock*, 185 U. S. 373; *State Highway Commission of Wyoming* v. *Utah Construction Co.*, 278

U. S. 194; *United States* v. *Golden,* 34 F. (2d) 367, 376 (C. C. A., 10th); *Schroeder* v. *Davis,* 32 F. (2d) 454 (C. C. A., 8th).

A similar situation was presented in *Minnesota* v. *Hitchcock,* 185 U. S. 373. An original suit was there brought in this Court by the State of Minnesota against the Secretary of the Interior and the Commissioner of the General Land Office, to enjoin them from selling certain lands. The court found that it had jurisdiction, basing its conclusion upon the fact that the United States, although not named as a party, was in fact the real defendant in the action, and that the Constitution extends the judicial power of the United States to controversies "to which the United States shall be a party." The Court, in other words, treated the case as one against the United States, even though it was not named as defendant.[2] Cf. *United States Fidelity & Guaranty Co.* v. *Kenyon,* 204 U. S. 349, and cases cited. The same rule has been applied in cases in

[2] The force of this analogy is not weakened by the opinion in *Williams* v. *United States*, 289 U. S. 553, 568, 572, which stated that *Minnesota* v. *Hitchcock* was erroneous in holding that the judicial power granted under Article III extended to suits to which the United States was a defendant, even if it had consented. There is no intimation in the *Williams* case that it disapproved of the fact that the United States was treated as the actual defendant even though not named as a party. Nor does the statement in the *Williams* case deprive this Court of appellate jurisdiction to review decisions of lower courts entered against the United States with its consent, for they exercise a judicial power, even though it is not derived from Article III of the Constitution. See 289 U. S. at 579–581.

which the jurisdiction of the Federal court rests upon diversity of citizenship. Jurisdiction there depends upon whether the citizenship of the real parties in interest is diverse, and formal parties of record will be ignored, both to sustain jurisdiction (*Wormley* v. *Wormley,* 8 Wheat. 421; *Browne* v. *Strode,* 5 Cranch 303) and to deny it (*Mitchell* v. *Maurer,* 293 U. S. 237, 242).

Applying the principle of these cases to the present action, the jurisdiction of the lower courts and of this Court rests upon the fact that it is actually one against the United States. Jurisdiction over such suits has been expressly vested in the district courts by the Act of July 3, 1930, *infra,* pp. 21–22, and by the Tucker Act (Act of March 3, 1887, c. 359, 24 Stat. 505; U. S. C., Title 28, Sec. 41, par. 20). Whatever formal defects may have existed in the way of service, etc., have been cured by the general appearance by the United States. *Farrar and Brown* v. *United States,* 3 Pet. 459; *Thames & Mersey Ins. Co.* v. *United States,* 237 U. S. 19; *United States* v. *New York & O. S. S. Co.,* 216 Fed. 61 (C. C. A. 2d). It is submitted, therefore, that this Court has jurisdiction.

## CONCLUSION

We respectfully submit that the decision of the court below is erroneous and should be reversed.

STANLEY REED,
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OCTOBER 1936.

## APPENDIX

Act of February 26, 1881, c. 80, 21 Stat. 350, 351 (U. S. C., Title 24, Sec. 138 and note):

> SEC. 2. All pensions payable, or to be paid under this act, to pensioners who are inmates of the National Home for Disabled Volunteer Soldiers shall be paid to the treasurer or treasurers of said home, upon security given to the satisfaction of the managers to be disbursed for the benefit of the pensioners without deduction for fines or penalties under regulations to be established by the managers of the home; said payment to be made by the pension agent upon a certificate of the proper officer of the home that the pensioner is an inmate thereof and is still living. Any balance of the pension which may remain at the date of the pensioner's discharge shall be paid over to him; and in case of his death at the home, the same shall be paid to the widow, or children or in default of either to his legal representatives.

Act of August 7, 1882, c. 433, 22 Stat. 302, 322, 323:

> * * * And section two of the act entitled "An act making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June thirtieth, eighteen hundred and eighty-two, and for deficiencies, and for other purposes", approved February twenty-six, eighteen hundred and eighty-one, is hereby revived and continued in force.

Act of August 17, 1912, c. 301, 37 Stat. 311, 313 (U. S. C., Title 38, Sec. 52):

> SEC. 6. That nothing in this Act shall be construed as amending or repealing that portion of the sundry civil appropriation Act for the fiscal year eighteen hundred and eighty-three (Statutes at Large, Volume twenty-two, page three hundred and twenty-two) concerning the payment of pensions due inmates of the National Home for Disabled Volunteer Soldiers.

Act of March 3, 1883, c. 130, 22 Stat. 564 (U. S. C., Title 24, Sec. 52):

> SEC. 4. That any inmate of the Home who is receiving a pension from the government, and who has a child, wife, or parent living, shall be entitled, by filing with the pension agent from whom he receives his money a written direction to that effect, to have his pension, or any part of it, paid to such child, wife, or parent. The pensions of all who now are or shall hereafter become inmates of the Home, except such as shall be assigned as aforesaid, shall be paid to the treasurer of the Home. The money thus derived shall not become a part of the funds of the Home, but shall be held by the treasurer in trust for the pensioner to whom it would otherwise have been paid, and such part of it as shall not sooner have been paid to him shall be paid to him on his discharge from the institution. The board of commissioners may from time to time pay over to any inmate such part of his pension-money as they think best for his interest and consistent with the discipline and good order of the Home, but such pensioner shall not be entitled to demand or have the same

so long as he remains an inmate of the Home. In case of the death of any pensioner, any pension money due him and remaining in the hands of the treasurer shall be paid to his legal heirs, if demand is made within three years; otherwise the same shall escheat to the Home.

Act of July 1, 1902, c. 1351, 32 Stat. 552, 564 (U. S. C., Title 24, Sec. 139):

Hereafter any balance of pension money due a member of the National Home for Disabled Volunteer Soldiers at the time of his death shall be paid to his widow, minor children or dependent mother or father in the order named, and should no widow, minor child, or dependent parent be discovered within one year from the time of the death of the pensioner, said balance shall be paid to the post fund of the Branch of said National Home of which the pensioner was a member at the time of his death, to be used for the common benefit of the members of the Home under the direction of the Board of Managers, subject to future reclamation by the relatives hereinbefore designated, upon application filed with the Board of Managers within five years after the pensioner's death.

Act of June 25, 1910, c. 384, 36 Stat. 703, 736 (U. S. C., Title 24, Sec. 136):

Hereafter the application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such

home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Board of Managers, and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Board of Managers is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant and as to contain the consent of the applicant to accept membership upon the conditions herein provided.

Act of July 3, 1930, c. 863, 46 Stat. 1016, 1017 (U. S. C., Title 38, Sec. 11d):

SEC. 5. (a) When the consolidation and coordination herein provided for shall have been effected in the Veterans' Administration the President shall so declare by proclamation or order, whereupon the corporation known as the National Home for Disabled Volunteer Soldiers and the Board of Managers shall cease to exist.

(b) All contracts and other valid and subsisting obligations of the corporation, the National Home for Disabled Volunteer Soldiers, shall continue and be and become obli-

gations of the United States, and the United States shall be considered as substituted for said corporation with respect to all such demands either by or against said corporation, unless and until they shall thereafter be superseded or discharged according to law. The outstanding obligations assumed by the United States by virtue of the provisions of this subdivision may be enforced by suit in the Court of Claims or in the district courts of the United States according to the ordinary provisions of law governing actions against the United States, and such courts shall have the power to enter judgment against the United States, with interest, in the same manner and to the same extent as if said corporation were party defendant. No such suit shall be maintained upon any cause of action existing at the time of the dissolution of said corporation or arising simultaneously therewith, unless brought within two years from the time of such dissolution.

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